

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOSEPH IRA BARTHOLOMEW TURNER,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00580-JPH-DLP
)	
JOHN PLASSE,)	
CHARLES FUNK,)	
ELVIS BURNS,)	
VIGO COMMISSIONER,)	
COUNCIL OF THE CITY OF TERRE HAUTE,)	
)	
Defendants.)	

ORDER DISMISSING COMPLAINT AND DIRECTING FURTHER PROCEEDINGS

The plaintiff's complaint describes incidents that allegedly occurred at the Vigo County Jail in 2018. The complaint states that the plaintiff has already filed a case in state court regarding these allegations. That case is proceeding under cause number 84D05-2004-SC-2032 in Vigo County.¹ The Court takes judicial notice of the online docket in that case which reveals that the case is scheduled for a bench trial on November 6, 2020. The plaintiff alleges that the state court is not cooperating, and he wishes to come to federal court. Dkt. 1 at 3. In other words, Mr. Turner does not wish to file a new case in this Court; he wishes to remove an existing case from state court.

Federal law does not allow the plaintiff in a state-court action to remove the case to federal court. Only a defendant may do so. 28 U.S.C. § 1441(a) ("[A]ny civil action brought in a State court . . . may be removed *by the defendant.*") (emphasis added); 28 U.S.C. § 1446(a) ("A

¹ The complaint lists the state case number as 84D01-2004-SC-2032, but the actual case number is 84D05-2004-SC-2032.

defendant or defendants desiring to remove any civil action for a State court shall file . . . a notice of removal.") (emphasis added). *See also First Bank v. DJL Properties*, 598 F.3d 915, 916 (7th Cir. 2010) ("[A] litigant who files suit in state court is a 'plaintiff' and cannot remove the case.") (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)).

The complaint is therefore **dismissed**. Mr. Turner shall have **through December 2, 2020**, to show cause why the Court should not dismiss this action and enter final judgment.

Mr. Turner shall also have **through December 2, 2020**, to either pay the \$400.00 filing fee for this action or demonstrate that he lacks the financial ability to do so by filing a motion for leave to proceed without the prepayment of the filing fee (*in forma pauperis*). If Mr. Turner seeks leave to proceed without prepaying the filing fee, his request must be accompanied by a copy of the transactions associated with his institution trust account for the six-month period preceding the filing of this action on October 29, 2020. The **clerk is directed** to include a form motion for leave to proceed *in forma pauperis* with Mr. Turner's copy of this Order.

SO ORDERED.

Date: 11/4/2020



James Patrick Hanlon
United States District Judge
Southern District of Indiana

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